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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/227,749

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BRIAN J. BALIN

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EXAMINER

PESELEV, ELLI

ART UNIT

PAPER NUMBER

1623

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/227,749

Applicant(s)

BALIN ET AL.

Examiner

Elli Peselev

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-31, 33, 34 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) 18-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31, 33, 34 and 36-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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In view of further consideration and the newly found prior art, the Final Rejection of October 22, 2004 is hereby withdrawn in order to introduce a new ground of rejection.

Claims 18-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 10, 1999.

Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 36 is indefinite in that it depends from claim 36.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 31, 33, 34 and 36-38 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mitchell et al (U.S. Patent No. 6,579,854).

Mitchell et al disclose that Chlamydia infection is associated with Alzheimer's disease (columns 28-29) and disclose the treatment of Chlamydia infection with an antimicrobial agent (see, for example, column 2, lines 14-20) alone or in combination with anti-inflammatory agents (column 31, lines 1-17). From the disclosure by Mitchell et al, a person having ordinary skill in the art at the time the instant invention was made would have envisaged the treatment of Alzheimer's disease with an anti-microbial agent alone or in combination with an anti-inflammatory agent.

Applicant's arguments filed April 22, 2005 have been considered but have not been found persuasive.

Applicant has submitted a Declaration as proof of conception prior to May 6, 1997. However, note that the effective date of this Mitchell et al patent is August 14, 1996. Further, the Mitchell et al patent discloses a wide range of disorders associated

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with Chlamydia infection, including Alzheimer's disease. No undue experimentation is required to show that Alzheimer's disease is associated with Chlamydia infection.

Claims 31 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by McLachlan (U.S. Patent No. 4,419,365).

McLachlan discloses that an antimicrobial agent tetracycline is recognized to have beneficial effects in Alzheimer's disease (column 3, lines 55-50). Therefore, the claimed method of treating Alzheimer's disease with an antimicrobial agent is anticipated by McLachlan.

Claims 31, 33, 34 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLachlan (U.S. Patent No. 4,419,365) in combination with Elsberry (U.S. Patent No. 5,846,220) or Xiaotao et al (U.S. Patent No. 6,255,347).

McLachlan discloses the treatment of Alzheimer's disease with an antimicrobial agent (column 3, lines 55-60) but does not disclose the treatment of Alzheimer's disease with an antimicrobial agent in combination with an anti-inflammatory agent. However, since each of Elsberry (column 1, lines 19-27) and Xiaotao et al (column 1, lines 32-48) and column 40, claim 5) discloses the use of anti-inflammatory agents for the treatment of Alzheimer's disease. Therefore, a person having ordinary skill in the art at the time the instant invention was made would have been motivated to combine an antimicrobial agent disclosed by McLachlan with anti-inflammatory agents disclosed by Elsberry or Xiaotao et al because said person would have expected the resulting combination to be useful for treating Alzheimer's disease.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (571) 272-0659. The examiner can normally be reached on 8.00-4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Wilson can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elli Peselev

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